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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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February 10, 2000

**VIA HAND DELIVERY**

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
The Portals II  
445 - 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

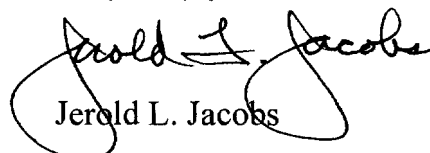
In re: Establishment of a Class A Television Service  
MM Docket Nos. 00-10 and 99-292

Dear Ms. Salas

On behalf of Channel 13 Television, Inc., licensee of low power television stations WDMR-LP (Channel 65), Springfield, Massachusetts, and WRDM-LP (Channel 13), Hartford, Connecticut, transmitted herewith are an original and six (6) copies of its Comments in the above-captioned rulemaking proceeding implementing the Community Broadcasters Protection Act of 1999.

If you have any questions concerning the Comments, please direct them to the undersigned.

Very truly yours

  
Jerold L. Jacobs

JLJ:btc

Enclosure

cc: Ms. Wanda Hardy (w/diskette)  
International Transcription Service (w/diskette)

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BEFORE THE  
**Federal Communications Commission**

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OFFICE OF THE SECRETARY

In the Matter of

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Establishment of a Class A  
Television Service

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MM Docket No. 00-10  
MM Docket No. 99-292  
RM-9260

TO: The Commission

**COMMENTS OF CHANNEL 13 TELEVISION, INC.**

CHANNEL 13 TELEVISION, INC. ("Channel 13"), licensee of LPTV Stations WDMR-LP (Channel 65), Springfield, Massachusetts, and WRDM-LP (Channel 13), Hartford, Connecticut, by its attorneys, pursuant to §1.415 of the Commission's Rules, hereby submits its Comments on Paragraph 24 ("*Stations Operating Between 698 and 806 Megahertz*") of the Order and Notice of Proposed Rule Making ("NPRM"), FCC 00-16, released January 13, 2000, in the above-captioned matter.

**I. Introduction**

1. The Community Broadcasters Protection Act of 1999 ("CBPA"), Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I, *codified at* 47 U.S.C. §336(f), establishes that Class A television licenses will be made available to licensees of qualifying low-power television ("LPTV") stations. Channel 13 holds two LPTV licenses -- WDMR-LP (Channel 65), Springfield, Massachusetts, and WRDM-LP (Channel 13), Hartford, Connecticut. On January 18, 2000, Channel 13 filed a Statement of Eligibility for Class A LPTV Status for both stations.

2. Channel 13 is proud of the fact that both of its stations vastly exceed the CBPA's qualifying programming requirements of broadcasting a minimum of 18 hours per day and an average of at least three hours per week of locally produced programming. Indeed, they operate 24 hours a day/seven days a week and average more than eight hours per week of locally produced programming. Since both stations are affiliated with the Telemundo Network, their programming is largely in Spanish and is primarily geared to the Hispanic community. They are also the only stations in their service areas with local daily news in Spanish, which is very important to the Hispanic community. However, in addition, they air one hour Monday to Friday, two hours on Saturday, and six and one-half hours on Sunday of Italian programming, including the daily news and soccer from Italy. Finally, on Saturday the stations do one hour of Greek programming, and on Sunday they do two hours of Polish programming.

3. These Comments focus on the plight of Station WDMR-LP, because it operates on Channel 65, and Section (f)(6)(A) of the CBPA states that the Commission may not grant a Class A license to an LPTV station for operation between 698 and 806 MHz (TV Channels 52-69). Thus, at first blush, only LPTV stations operating on channels in the "core spectrum" (channel 2-51) appear to be eligible for Class A status, and Station WDMR-LP would appear to be excluded. But, as Paragraph 24 of the NPRM notes, Section (f)(6)(A) then seeks to correct this draconian result by stating that "the Commission shall provide to low-power television stations assigned to and temporarily operating in [Channels 52-69] the opportunity to meet the qualification requirements for a class A license." Furthermore, Section (f)(6)(A) also provides that "if such a qualified applicant for a class A license is assigned a channel within the core spectrum [Channels 2-51], the Commission shall issue a class A license simultaneously with the assignment of such channel."

4. Paragraph 24 of the NPRM requests comments on how the Commission should implement the above “out of core spectrum” provisions of the CBPA. Specifically, Paragraph 24 notes that the CBPA does not address when a station operating outside the core spectrum becomes eligible for contour protection. For the reasons which follow, Channel 13 urges that the Report and Order in this proceeding should grant contour protection to an otherwise qualified LPTV licensee, such as Station WDMR-LP, from the date on which said licensee files an application to relocate to a frequency inside the core spectrum. In that way, the Commission will maximize the relief intended to be provided by the CBPA to disadvantaged LPTV licensees who, like Channel 13, currently hold LPTV licenses for frequencies outside the core spectrum. Station WDMR-LP’s January 18, 2000 Statement of Eligibility contained an Exhibit explaining that it was being filed to preserve the licensee’s rights under the CBPA. These Comments elaborate on what those rights are and ought to be.

## **II. Maximum Contour Protection Relief Should be Provided To LPTV Licensees Who File In-Core Applications**

5. The purpose and spirit of the CBPA is fully captured in its very title – Community Broadcasters Protection Act – and by the subtitle of the relevant revisions to Section 336 of the Communications Act of 1934 – “Preservation of Low-Power Community Television Broadcasting”. Simply stated, the CBPA is intended to “protect” and “preserve” qualified LPTV stations. Moreover, and most importantly, the spirit of the CBPA is clearly to maximize such protection and preservation – not to provide minimal or begrudging relief.

6. In that light, Channel 13 strongly opposes the Commission’s initial thinking in Paragraph 24 of the NPRM that stations operating outside the core channels should become eligible for contour protection only when they are assigned a channel within the core spectrum and the Commission issues a Class A license to the station.

7. The confusion about the appropriate point at which contour protection should begin is heightened by Paragraph 24's use of the "licensing" concept in two different ways. First, Paragraph 24 paraphrases the CBPA's language and states that contour protection should begin "when the station is assigned a channel within the core spectrum and the Commission issues a Class A license." Then, the same Paragraph asks whether Class A status and contour protection should commence "with the grant of a construction permit on the in-core channel or a license to cover construction". Channel 13 believes that both proposals are wrong, because they reflect a minimalist attitude toward the contour protection question, contrary to the letter and spirit of the CBPA.

8. Instead of the proposed begrudging delay in providing contour protection to prospective in-core LPTV licensees, Channel 13 urges that the Commission should use the same contour protection date that it has historically employed for all full-power AM, FM, and TV broadcast services, namely the date on which an application is filed with the Commission. Paragraph 24 of the NPRM is simply mistaken when it states that "to provide interference protection before the station is assigned an in-core channel appears inconsistent with the Act's prohibition on awarding Class A status to stations outside the core." It is clear that providing interference protection to a filed application, pending its grant or denial, is not akin to "awarding a...license" (emphasis added), which is the CBPA's language and should be the Commission's only concern. Paragraph 24 distorts the analysis by speaking about "Class A status" (emphasis added), a concept which is not found in the CBPA and should be dropped from the contour protection discussion.

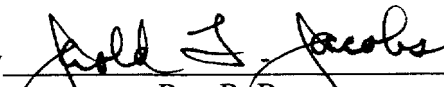
9. Put differently, the time span difference between granting contour protection as of the date of filing a construction permit application and granting it only when a license to cover construction of a in-core LPTV facility has been approved by the Commission could easily be

six to 12 months or more. During that time, the upgrading of other LPTV and full-power TV facilities could seriously erode the practical service area protection benefits of eventually holding a Class A license. Thus, Channel 13 maintains that, given the maximization intent of the CBPA, it behooves the Commission to choose a contour protection initiation date that maximizes, not minimizes, the amount of contour protection that a disadvantaged out-of-core LPTV licensee may obtain by filing an in-core application. That maximization date is clearly the date on which an eligible LPTV licensee files its in-core application.

WHEREFORE, in light of the foregoing, Channel 13 Television, Inc. respectfully requests that the Commission should adopt a Report and Order in this proceeding consistent with these Comments.

Respectfully submitted

CHANNEL 13 TELEVISION, INC.

By   
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Dated: February 10, 2000